

**THE UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF OHIO
EASTERN DIVISION**

MARK ALSTON,)	CASE NO.: 1:06CV2903
)	
Petitioner,)	JUDGE JOHN ADAMS
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

This matter comes before the Court on Motion by Plaintiff Mark Alston to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. Section 2255 states in pertinent part,

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Plaintiff's first ground for relief is a motion to withdraw his guilty plea. Such a motion is not proper under a § 2255 motion and should be filed in Plaintiff's criminal case.

Plaintiff's second ground for relief is a claim of double jeopardy. Again, the Court finds that such a claim is not properly brought under a § 2255 motion.¹ Finally, Plaintiff

asserts in ground three that he received ineffective assistance of counsel. However,

Plaintiff fails to set forth any facts in support of this claim. The Court finds upon review

¹ Plaintiff states, under ground two, that he received ineffective assistance of counsel because his counsel did not file an appeal. However, Plaintiff has submitted no evidence that he requested an appeal be filed. Additionally, it is unclear from the Motion whether Plaintiff is speaking of his stated criminal action or the one before this Court.

that the motion, files, and records of the case conclusively show that the prisoner is entitled to no relief and thus DENIES Plaintiff's § 2255 Motion to Vacate, Set Aside, or Correct Sentence.

So ordered.

Date: April 10, 2007

s/ Judge John R. Adams
JUDGE JOHN R. ADAMS
UNITED STATES DISTRICT COURT